ing, in an opinion written by Mr. Justice White, that quarantine laws belong to that class of local regulations which may be enforced until superseded by Congress, although such enforcement may incidentally affect or interfere with inter-state or foreign commerce and not to that class in which the inaction of Congress amounts to a declaration that commerce in that respect shall be free from any regulation. *Louisiana* v. *Texas*, 176 U. S. 1, 21, 44 L. ed. 347, 355, 20 Sup. Ct. Rep. 251, 258, and *Morgan's Co.* v. *Louisiana Board of Health*, 118 U. S. 455, 30 L. ed. 237, 6 Sup. Ct. Rep. 1114, were chiefly relied upon. As to the alleged covert purpose to prohibit immigration, the court held that it must pass upon the law as it appeared; that the possibility of abuse under it would not justify declaring it void, and that "it will be time enough to consider a case of such supposed abuse when it is presented for consideration." Justices Brown and Harlan dissented, in an opinion by the former. Their positition was that a statute which thus authorized the exclusion of any person, however healthy, and for an indefinite and possibly permanent period went beyond the legitimate scope of a health-regulation and amounted to a prohibition of commerce. *Hannibal, etc., R. Co.*, v. *Husen*, 95 U. S. 465, 24 L. ed. 527, was cited as directly in point, and *State* v. *The Constitution*, 42 Cal. 578, 10 Am. Rep. 303, and *Bangor* v. *Smith*, 83 Me. 422, 22 Atl. Rep. 379, 13 L. R. A. 686, were cited as analogous.

DRUGGIST—LIABILITY FOR NEGLIGENCE.—Cases involving the liability of druggists for alleged negligence in preparing or dispensing drugs continue to appear. [See 1 MICH. L. REV. 63.] In one of the most recent it was alleged that the plaintiff wrote to defendant "Will you please send me 50c worth of Phos Phorus By express to Colect on Delever and if it works as I Think it will Thare will Bee A Big Demand for it." He alleged also that in response, defendant sent him by express three sticks of phosphorus immersed in water in a glass bottle labeled "phosphorus," but without any other written directions or warning whatsoever accompanying it. He removed the phosphorus from the bottle, and while handling and examining it, it exploded or ignited and burned him badly. The action was to recover damages, the complaint being that defendant was aware of the danger while plaintiff was not, and that, under the circumstances, the defendant should have warned the plaintiff of the risk. It was also contended that plaintiff's letter was so illiterate that it ought to have apprised defendant that the plaintiff was not a suitable person to intrust with the drug without specific warning as to its dangerous qualities. A demurrer to the petition was sustained, the court holding that a druggist, who supplies a well-known article in pursuance of a request for it by a person of maturity and apparently in the possession of his faculties, is not bound to point out its dangerous character or the manner in which it can be safely used or handled, unless there be something in the circumstances indicating that the purchaser cannot be safely intrusted with it. With respect of the alleged illiteracy, the court said that it was not safe to declare that a man who could not spell or compose correctly was to be therefore deemed unfit to be intrusted with dangerous substances. *Gibson* v. *Torbert* (1901), — Iowa — , 88 N. W. Rep. 443, 56 L. R. A. 98.

On the other hand, if a druggist fills an order for calomel by supplying morphine in a box labeled calomel, there may be found to be such gross neg-

ligence as will justify exemplary damages. *Smith* v. *Middleton* (1902), — Ky. — , 66 S. W. Rep. 388 56 L. R. A. 484. And the druggist is not relieved of liability by the fact that the negligence was that of a registered pharmacist, employed by him, although such persons are alone permitted, by the statute, to fill prescriptions. *Burgess* v. *Sims Drug Co.* (1901), — Iowa — , 86 N. W. Rep. 307, 54 L. R. A. 364. To fail to label a bottle containing poison with the word "Poison" as required by the statute will make the druggist liable for an injury to one who is ignorant of its character, but such a statute, it is held, does not apply to medicines compounded upon a physician's prescription, even though they contain poison. *Wise* v. *Morgan* (1898), 101 Tenn. 273, 48 S. W. Rep. 971, 44 L. R. A. 548.

CONSTITUTIONAL LAW—INTER-STATE COMMERCE—CHARGING MORE FOR SHORTER THAN FOR LONGER HAUL.—The constitution of Kentucky forbids a common carrier to charge more for the transportation of passengers or freight of like kind, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but provides that the railroad commission may, upon investigation, for special reasons, relieve a carrier from the prohibitions. Two cases involving the validity and effect of this provision, in view of the Fourteenth Amendment, were recently before the supreme court of the United States. In the first of these cases (*Louisville Railroad Co.* v. *Kentucky*, 183 U. S. 503, 22 Sup. Ct. Rep. 95), it was held that, as to freight transported wholly within the State, the provision could not be impeached, either because it deprived the railroad company of its property without due process of law, or because it denied to the company the equal protection of the laws; and as to any interference with inter-state commerce resulting from its enforcement, it was held that this was too remote and indirect to be considered. In the second case however, (*Louisville, etc., Railroad Co* v. *Eubank*, 184 U. S. 27), it was held that, when applied to a long haul of goods from without the state, to a point within the state, and a short haul from one point to another within the state, over the same line and in the same direction the carrier would be obliged to fix his inter-state rate with some reference to the state rate, and that to this extent the provision operated as an attempted regulation of inter-state commerce, and was void. From the latter decision, Justices Brewer and Gray dissented. They contended that the effect of the provision was, not to compel the carrier to make his inter-state rate the same as the state rate, but merely to make the state rate the same as the inter-state rate, and that this was valid in the absence of any complaint that the inter-state rate was so unreasonably low as to interfere with the carrier's constitutional rights.

MALICIOUS PROSECUTION OF PURELY CIVIL ACTION WITHOUT ARREST OF PERSON OR SEIZURE OF PROPERTY.—The vexed questiou whether an action may be maintained for maliciously prosecuting a civil action where there was neither arrest of the person nor seizure of property, was elaborately discussed in the late case of *Luby* v. *Bennett*, (1901), 111 Wis. 613, 87. N. W.